

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 18

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO ADMINISTRATIVE PROCEDURES; AMENDING A SECTION OF
THE EXECUTIVE REORGANIZATION ACT TO PROVIDE FOR NEGOTIATED
RULEMAKING COMMITTEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 9-1-9 NMSA 1978 (being Laws 1977,
Chapter 248, Section 9) is amended to read:

"9-1-9. CREATION OF ADVISORY COMMITTEES--WHO MAY CREATE--
FILING--APPLICATIONS--COMPOSITION--LIFE SPAN--TITLE--QUORUM--
COMPENSATION.--

A. Advisory committees may be created. "Advisory"
[~~shall mean~~] means furnishing advice, gathering information,
making recommendations and performing such other activities as
may be instructed or delegated and as may be necessary to
fulfill advisory functions or to comply with federal or private

underscoring material = new
[bracketed material] = delete

1 funding requirements and [~~shall~~] does not extend to
2 administering a program or function or setting policy unless
3 specified by law.

4 B. The governor or a department secretary, with
5 approval of the governor, may create advisory committees.

6 C. Each creating authority must file with the
7 governor and the secretary of finance and administration a
8 record of the advisory committee created, showing the
9 committee's:

10 (1) name;

11 (2) composition;

12 (3) appointed members' names and addresses;

13 and

14 (4) purpose and term of existence.

15 D. The secretary of each department created by the
16 Executive Reorganization Act shall, upon the effective date of
17 the Executive Reorganization Act, file a record of each
18 advisory committee within the department not abolished. Upon
19 the filing of such a record, the provisions of this section
20 shall apply to each such advisory committee.

21 E. The creating authority shall prescribe the
22 composition and functions of each advisory committee created,
23 appoint its members who shall serve at the pleasure of the
24 creating authority and specify a date when the existence of
25 each advisory committee ends.

.174792.1

underscored material = new
[bracketed material] = delete

1 F. No advisory committee may be created to remain
2 in existence longer than two years after the date of its
3 creation or beyond the period required to receive federal or
4 private funds, whichever occurs later, unless extended by
5 executive order of the governor. If the existence of an
6 advisory committee is extended, the extension shall not be for
7 more than two years.

8 G. Each advisory committee created under this
9 section shall be known as the " _____
10 advisory committee".

11 H. A majority of the membership of an advisory
12 committee [~~shall constitute~~] constitutes a quorum.

13 I. Each member of an advisory committee may receive
14 compensation for travel and per diem expenses incurred in the
15 performance of [~~their~~] the member's duties within budgeted
16 amounts and in accordance with the provisions of the Per Diem
17 and Mileage Act.

18 J. A department secretary may establish a
19 negotiated rulemaking committee to negotiate and develop a
20 proposed rule if the secretary determines that the use of the
21 negotiated rulemaking procedure is in the public interest. The
22 membership of a negotiated rulemaking committee shall be a
23 balanced representation of persons and stakeholders of interest
24 who are willing to negotiate in good faith to reach a consensus
25 on the proposed rule. The secretary shall, consistent with the

.174792.1

underscoring material = new
[bracketed material] = delete

1 lawful duties of the agency, use the consensus of the committee
2 as the basis for developing the rule proposed by the agency.
3 The secretary may employ or contract for services of a convenor
4 or facilitator in organizing a committee and conducting
5 meetings of the committee. If a secretary decides to establish
6 a negotiated rulemaking committee, the secretary shall notify
7 the public by publishing a notice. Persons who will be
8 significantly affected by a proposed rule may apply for
9 membership on the negotiated rulemaking committee. The
10 secretary shall provide for a period of at least thirty
11 calendar days for the submission of applications for
12 membership. The secretary shall limit membership on a
13 negotiated rulemaking committee to twenty-five members. A
14 convenor or facilitator approved or selected by a committee
15 shall chair the meetings of the committee in an impartial
16 manner. If a committee reaches a consensus on a proposed rule,
17 at the conclusion of negotiations, the committee shall transmit
18 to the secretary that established the committee a report
19 containing the proposed rule. If the committee does not reach
20 a consensus on a proposed rule, the committee may transmit to
21 the secretary a report specifying any areas in which the
22 committee reached a consensus. By July of each year, each
23 secretary who has established a negotiated rulemaking committee
24 shall prepare a written report to submit to the governor, the
25 president pro tempore of the senate, the speaker of the house

.174792.1

underscoring material = new
[bracketed material] = delete

1 of representatives and the appropriate interim committee or
2 committees for review regarding the number of rulemaking
3 proceedings engaged in by the agency and whether negotiated
4 rulemaking under this subsection was considered and used. If a
5 negotiated rulemaking committee reaches consensus and the
6 agency later adopts a final rule that is inconsistent with the
7 consensus of the negotiated rulemaking committee, the secretary
8 shall include in the written report a listing of all facts and
9 legal reasons why the agency departed from the consensus of the
10 negotiated rulemaking committee."

11 - 5 -